

Exhibit 5

1
2 UNITED STATES DISTRICT COURT
3 EASTERN DISTRICT OF NEW YORK
4 No. 18 Civ. 2949 (ARR) (RER)

- - - - -x

5
6 SUSANNA MIRKIN and BORIS MIRKIN,
Individually and on Behalf of All Others
Similarly Situated,

7
8 Plaintiffs,

- against -

9
10 XOOM ENERGY, LLC AND XOOM ENERGY
NEW YORK, LLC,
11 Defendants.

12 - - - - -x

13
14 16 Court Street
Brooklyn, New York 11241

15
16 August 30, 2022
10:21 a.m.

17
18 DEPOSITION of SUSANNA MIRKIN (REDACTED),
19 a Plaintiff in the above-entitled action,
20 held at the above time and place, taken
21 before SAMUEL HITTIN, a Shorthand Reporter
22 and Notary Public of the State of New
23 York, pursuant to the Federal Rules of
24 Civil Procedure, order and stipulations
25 between Counsel.

Page 1

1 S. MIRKIN

2 And they need to organize either their
3 playroom or kitchen or children's
4 dressers. So I give them the system, and
5 I teach them how to declutter and how to
6 make the system running. Because they are
7 disabled children, so they don't have the
8 time to organize their homes -- so I give
9 them the system and how to go accordingly.

10 Q. Okay. And how long have you had
11 that job with Comfort Health?

12 A. Less than six months.

13 Q. What was the last job you had
14 before you were employed by Comfort
15 Health?

16 A. I was -- I had a payroll job.

17 Q. Who was your employer in the
18 payroll job?

19 A. NYPD.

20 Q. And what were your job duties in
21 that position?

22 A. I did payroll for a company. I
23 did bookkeeping, day-to-day transactions,
24 overtime sheets, entering database.

25 Q. And what was the name of that

1 S. MIRKIN

2 company?

3 A. It's NYPD.

4 Q. Oh, okay. Sorry. I
5 misunderstood. I thought you were talking
6 about a private company.

7 You did bookkeeping and
8 payroll --

9 A. For a police department.

10 Q. -- for NYPD?

11 A. Correct.

12 Q. Okay. And what was the time
13 period that you had that position with
14 NYPD?

15 A. 2015 till 2021.

16 Q. And what was the job that you
17 had before you went to work for NYPD?

18 A. The job I had before was Early
19 Intervention. It's called Early
20 Intervention, by Challenge. I was a
21 service coordinator.

22 Q. The name of the company is Early
23 Intervention, or the --

24 A. Challenge Early Intervention.
25 That's the name of the company.

1 S. MIRKIN

2 A. No.

3 Q. Have you and Mr. Mirkin ever
4 owned any other properties?

5 A. No.

6 Q. Do you remember the address you
7 lived at before moving to 1677 East 34th?

8 A. I lived in Queens.

9 Q. I see.

10 Okay. Ms. Mirkin, you've never
11 live in Staten Island, right?

12 A. No.

13 Q. Okay. And do you understand
14 that there has been some documents
15 produced in this case that show a Boris
16 Mirkin receiving gas service from XOOM
17 Energy?

18 A. I saw that, yes.

19 Q. Okay. But that is not your
20 husband?

21 A. That is not my husband.

22 Q. That's a different Boris Mirkin?

23 A. Correct.

24 Q. Is that Boris Mirkin related to
25 your husband?

1 S. MIRKIN

2 A. I think he's a cousin.

3 Q. Okay.

4 A. My husband would know more about
5 this Boris Mirkin.

6 Q. Yes. But just to show you --

7 MR. MATTHEWS: Can I have the
8 stickers. Thank you.

9 Q. Ms. Mirkin, I'm going to mark
10 this document, which is an e-mail. The
11 heading says New Customer Enrollment, just
12 so we're -- we know we're talking about
13 the same thing.

14 A. Sure.

15 Q. I'm going to hand you that.

16 A. Mm-hmm.

17 [Whereupon, document was marked
18 as Defendants' Exhibit 4 for
19 identification, as of this date.]

20 Q. This is a document that's been
21 Bates-labeled XOOM INIT 12 through 13.

22 Have you seen this document
23 before?

24 A. No.

25 Q. No. Fair enough.

1 S. MIRKIN

2 The billing info there, you
3 see it shows Boris Mirkin, 21 Peggy Lane,
4 Staten Island, New York 10306? Do you see
5 that?

6 A. I see that.

7 Q. And that's not your husband?

8 A. That's not my husband.

9 Q. And the phone number is not --

10 A. That's --

11 Q. -- your husband's phone number,
12 and you've never seen that e-mail address
13 either?

14 A. No.

15 Q. Okay. So this account that is
16 referred to in Exhibit 4 is not an account
17 that ever belonged to or was used by you
18 or your husband?

19 A. Correct.

20 Q. And to the best of your
21 knowledge, you've never had natural gas
22 service with XOOM Energy, correct?

23 A. Yes. Correct.

24 Q. And neither has your husband, to
25 the best of your knowledge?

1 S. MIRKIN

2 A. I'm not sure. He takes care of
3 all the bills, so I'm not sure.

4 Q. Okay. Okay. And you personally
5 don't know anything about the natural gas
6 rates that XOOM charged in New York since
7 it entered the market here, correct?

8 A. The gas?

9 Q. Yes, ma'am.

10 A. No.

11 Q. You said that your husband is
12 the one who takes care of the bills. Is
13 he generally -- is it fair to say he's the
14 one who is generally in charge of energy
15 decisions in the house?

16 A. Correct.

17 Q. Does he consult with you about
18 retail energy decisions?

19 A. Sure, we discuss it, but he
20 takes care of it at the end.

21 Q. Okay. Just help me understand
22 in a basic way how it works in your
23 household with respect to selecting energy
24 providers for electricity or natural gas.

25 A. So he basically looks for the

1 S. MIRKIN

2 A. Right.

3 Q. And specifically, the phrase
4 "actual" -- "XOOM's actual and estimated
5 supply costs," right?

6 A. Mm-hmm.

7 Q. And my question is just, do you
8 today or have you ever known what XOOM's
9 actual and estimated supply costs were?

10 MR. WITTELS: Objection.

11 You can answer.

12 A. No.

13 Q. Okay. Your husband enrolled the
14 two of you in this contract with XOOM that
15 we see at Exhibit 3, correct?

16 A. Correct.

17 Q. And the -- do you know how he
18 enrolled?

19 A. In my understanding, I think it
20 was online.

21 Q. Okay. And when did you first
22 hear about XOOM?

23 A. When we applied. When he talked
24 about it, the different rates and what's
25 out there was the lowest rate. So that's

1 S. MIRKIN

2 when I first heard about it.

3 Q. Why did he enroll under your
4 name?

5 A. To have something under my name,
6 to have residential proof.

7 Q. Residential proof for you?

8 A. Yes.

9 Q. Did you need that for
10 employment?

11 A. For employment.

12 Q. I see.

13 At the time, did you understand
14 that the rate that you were enrolling with
15 XOOM was a rate that could vary from month
16 to month?

17 A. My husband probably did, but it
18 wasn't in my understanding. When we
19 applied, he told me it was the lowest
20 rate, and I agreed, so he took care of the
21 rest.

22 Q. You didn't have an understanding
23 as to whether the rate was fixed or
24 variable at the time?

25 A. No.

CERTIFICATION

I, Samuel Hittin, a Notary Public for
and within the State of New York, do
hereby certify:

That the witness whose testimony as
herein set forth, was duly sworn by me;
and that the within transcript is a true
record of the testimony given by said
witness.

I further certify that I am not
related to any of the parties to this
action by blood or marriage, and that I am
in no way interested in the outcome of
this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 6th day of September,
2022.



SAMUEL HITTIN

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